

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JACK K. STEIN,

Plaintiff,

v.

KENNETH QUINN,

Defendant.

No. C06-1047MJP

ORDER ON PETITION FOR
CERTIFICATE OF APPEALABILITY

This matter comes before the Court on Plaintiff's petition for a certificate of appealability. (Dkt. No. 41). Having reviewed Plaintiff's petition and the balance of the record, the Court DENIES Plaintiff's request for a certificate of appealability for the reasons stated below.

As a preliminary matter, Plaintiff does not need a certificate of appealability to the extent he is appealing the Court's order dismissing his claims under 42 U.S.C. § 1983 without prejudice. The requirements for a certificate of appealability apply to claims for habeas corpus relief, rather than to claims under Section 1983. See, e.g., Hagopian v. Smith, 2006 WL 3690905 at *1 (E.D. Mich. Dec. 12, 2006) ("A certificate of appealability is not required to appeal from an order denying relief in a § 1983 action").

To the extent Plaintiff is appealing the Court's dismissal of his claims for habeas corpus relief under 28 U.S.C. § 2254, a certificate of appealability would be necessary under 28 U.S.C. § 2253(c). In this case, the Court dismissed Plaintiff's habeas claims on procedural grounds, without reaching the

1 merits of his constitutional claims. In such cases, the Supreme Court has held that a prisoner seeking a
2 certificate of appealability must show “that jurists of reason would find it debatable whether the
3 petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it
4 debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S.
5 473, 484 (2000) (emphasis added). Here, the Court finds that Petitioner has not demonstrated that
6 reasonable jurists would find it debatable whether the Court was correct in its procedural ruling.
7 Therefore, the Court denies Plaintiff’s request for a certificate of appealability on his habeas claims
8 under 28 U.S.C. § 2254.

9 The Clerk is directed to send copies of this order to Plaintiff.

10 Dated: June 11, 2007.

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12 s/Marsha J. Pechman
13 Marsha J. Pechman
14 United States District Judge
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